

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS
WESTERN DIVISION

BPB, LLC and HOMEBASE
PROPERTIES, LLC d/b/a Munchies',
Plaintiffs.

v.

JOSEPH J. MILLER,
Defendant.

DOCKET NO. 04-30021-MAP

ORDER ON PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER

1. Plaintiffs' Motion for Temporary Restraining Order came before the Court on February 20, 2004 for hearing. Both parties were represented by counsel.
2. After due deliberation, it is hereby ordered and adjudged that the defendant, Joseph J. Miller, shall take all necessary steps to accomplish the transfer of the liquor license from the defendant, Joseph J. Miller, to plaintiff, BPB, LLC, for premises located at 1525 West Housatonic Street, Pittsfield, Massachusetts.
3. In order to accomplish the transfer as provided for in Paragraph 2 above, the defendant, Joseph J. Miller, shall, within fourteen (14) days of this Order, execute the document attached hereto as *Exhibit A* which is provides an administrative vehicle by which the license may be transferred from Joseph J. Miller to BPB, LLC.

It is So Ordered:


MICHAEL A. PONSOR
United States District Judge *2-27-04*

Exhibit A

February 25, 2004

Ellen M. Moriarty, Executive Director
Alcohol Beverage Control Commission
239 Causeway Street
Boston, MA 02114

Re: **Reversion of Liquor License from Joseph J. Miller to BPB, LLC**

Dear Ms. Moriarty:

On or about May 7, 2003, Joseph J. Miller (“Miller”) and Homebase Properties, LLC (“Homebase”) entered into a Purchase and Sale Agreement (“Agreement”) for property located at 1525 West Housatonic Street, Pittsfield, Massachusetts. The sale included the transfer of an all alcoholic restaurant liquor license for alcoholic beverages owned by BPB, LLC (“BPB”) to Miller. After approval by the Pittsfield Licensing Board, the license was submitted to the Alcohol Beverage Control Commission (“ABCC”). On October 15, 2003, the ABCC authorized the transfer of the license from BPB to Miller.

The Agreement between Miller, BPB and Homebase, however, was never consummated. Miller continues to hold the license transferred to him on October 15, 2003. Miller never exercised his rights of operation pursuant to the license. A lawsuit was filed in the Berkshire Superior Court on or about January 28, 2004 requesting in a Motion for Temporary Restraining Order that the license be returned to BPB. Miller removed the complaint to the Federal District Court and BPB’s Motion for Temporary Restraining Order was heard before Ponsor, J., on February 20, 2004.

After the hearing, the Court, Ponsor, J., ordered that Miller take all necessary steps to transfer the license back to BPB. Based on that order, Miller hereby requests administratively that the license issued to him on October 15, 2003 revert back to BPB.

Joseph J. Miller

CIANFLONE & CIANFLONE, P.C.

ATTORNEYS AT LAW

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OF COUNSEL

ANDREA F. NUCIFORO*

*ALSO ADMITTED IN NEW YORK

February 25, 2004

VIA FEDEX

Elizabeth French, Clerk
U. S. District Court for the
District of Massachusetts
Western Division
Federal Building and Courthouse
1550 Main Street
Springfield, MA 01103

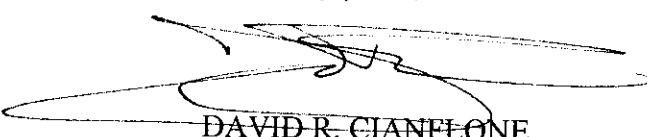
Re: BPB, LLC and Homebase Properties, LLC d/b/a Munchies'
v. Joseph J. Miller
Docket No. 04-30021-MAP

Dear Ms. French:

This matter came before the Court for hearing on February 20, 2004. Judge Ponsor issued an Order from the bench indicating that I should provide him with a proposed Order for signature for the transfer of the liquor license from the defendant back to the plaintiff. Enclosed is a copy of that proposed Order.

Thank you for your courtesy and cooperation.

Very truly yours,



DAVID R. CIANFLONE

DRC/bjm

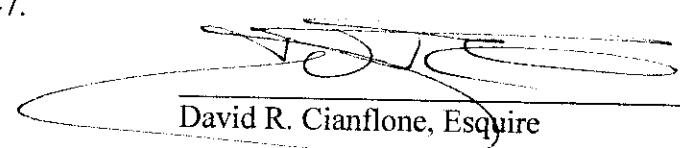
Enclosures

cc: J. Joseph Breault (w/enclosures)

CERTIFICATE OF SERVICE

I, David R. Cianflone, Esquire hereby certify that I have on this date served the foregoing via first-class mail to Douglas J. Rose, Esquire, Donovan & O'Connor, LLP, 1330 Mass MoCA Way, North Adams, MA 01247.

Dated: February 25, 2004



David R. Cianflone, Esquire